



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 639**

**IN THE MATTER
OF
DIANNE WILKERSON**

DISPOSITION AGREEMENT

The State Ethics Commission and Dianne Wilkerson enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 21, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Wilkerson. The Commission has concluded its inquiry and, on April 10, 2001, found reasonable cause to believe that Wilkerson violated G.L. c. 268A.

The Commission and Wilkerson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Wilkerson has served in the state legislature since 1993. As a senator, she is a state employee within the meaning of G.L. c. 268A, §1.
2. Wilkerson has been actively interested in minority community issues, in general, and in minority community banking issues, specifically, for several years, first in her capacity as a private practice attorney and community activist in the 1980s and then as a state senator in the 1990s.
3. At all times relevant in this agreement, the Boston Bank of Commerce ("BBOC") was the only minority-owned financial institution in New England.
4. In January 1999, Wilkerson, in her private capacity, entered into a contract with the BBOC by which from December 15, 1998 to April 15, 1999, she was to solicit private-sector deposits for the BBOC. According to the agreement, Wilkerson was to "identify deposit prospects from the private sector and actively solicit such prospects for significant funds to be placed with BBOC." The contract provided that Wilkerson would receive a monthly retainer fee of \$1,000, plus a one-time fee for each new deposit generated and maintained, based on a set fee schedule.
5. In May 1999, Wilkerson's contract was extended through December 31, 1999. Wilkerson's monthly retainer fee was increased to \$2,000.

6. Wilkerson provided the services and received the fees contemplated by the contract and its extension.

7. In 1999, the BBOC paid Wilkerson monthly fees totaling \$21,500 pursuant to the original contract and the contract as extended.

8. In spring 1999, a merger between Fleet Bank and BankBoston was pending. At that time it was clear that any such merger would require Fleet to divest a number of its branches.

9. Wilkerson was concerned about the negative impact the Fleet and BankBoston merger could have on minority and low-income communities across the commonwealth. Wilkerson wanted Fleet to divest some its branches and transfer them to banks with a history of serving minority communities. The BBOC fit that description and was interested in acquiring the local branches.

10. The BBOC informed Fleet that it was interested in purchasing some of the branches that would be divested in the merger. If the BBOC had been permitted to purchase all the branches it desired, the BBOC would have increased its deposits six-fold by purchasing the branches that Fleet planned to sell.

11. On June 4, 1999, Wilkerson wrote a letter on her senate letterhead to Fleet and BankBoston stating that the merger divestiture plan should be one that supports local, minority-owned banks. In an attachment to the letter, Wilkerson noted favorably the example of another bank, which under similar circumstances sold four branches and \$50 million in associated deposits to a minority-owned commercial bank. Wilkerson also wrote, "The Department of Justice and Federal Reserve Board can ensure that competition and community interests are served by directing FleetBank and BankBoston to make some of their divested branches available to a CDFI."¹ /

12. In addition, Wilkerson forwarded a copy of her June 4, 1999 letter to the Board of Bank Incorporation ("the BBI"). The BBI is a state adjudicative body consisting of the State Treasurer, the Banking Commissioner and the Department of Revenue Commissioner. The BBI represented the final regulatory hurdle before the merger of Fleet and BankBoston was complete.

13. On July 7, 1999, Wilkerson, identifying herself as a state senator, testified at a public meeting on the merger before the Federal Reserve Board in Boston. In her testimony, Wilkerson stated that the question of who gets the divested branches was of critical importance to the minority community and that the BBOC, as the sole minority-owned bank in the community, should get these branches.

14. Wilkerson, identified as a state senator, also spoke at a public hearing before the BBI on July 13, 1999. Her testimony was substantially the same as what she gave before the Federal Reserve Board. In a July 13, 1999 BBI filing, Wilkerson wrote, "The support for divestiture to community banks, and the minority-owned bank, BBOC, results from awareness as to who is currently serving the public need. We encourage this Board to pay attention to this reality as well."

15. Wilkerson was not compensated under her consulting arrangement with the BBOC for her actions in advocating the BBOC receive some of the branches divested through the Fleet/BankBoston merger.

16. The BBI approved the Fleet/BankBoston merger on September 30, 1999. Fleet ultimately sold all the divested branches to Sovereign Bank.

17. On October 1, 1999, Wilkerson contacted the Commission seeking legal advice and subsequently on October 21, 1999, requested that this matter be referred to the Commission's enforcement division for review.

18. Wilkerson received legal advice concerning her arrangement with the BBOC from the Commission. According to Wilkerson, she understands that advice and complied with it. In addition, Wilkerson will request additional guidance in the future regarding any arrangement with BBOC from the Commission, if necessary, and will act accordingly.

19. Wilkerson cooperated with the Commission's investigation.

Conclusions of Law

20. General Laws chapter 268A, §23(b)(3), in relevant part, prohibits a state employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as the result of kinship, rank, position or undue influence of any party or person. An elected state employee can avoid a violation of §23(b)(3) by disclosing in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

21. By advocating in testimony and written submissions and/or letters as a state senator that the BBOC and/or minority-owned banks should receive the divested branches arising from the Fleet/BankBoston merger while she had a significant private commercial relationship with a potential beneficiary of her official actions, Wilkerson with reason to know acted in a manner which would cause a reasonable person knowing these facts to conclude that the BBOC can unduly enjoy her favor in the performance of her official duties. Therefore, Wilkerson violated §23(b)(3). (This violation could have been avoided if Wilkerson had disclosed in a manner which was public in nature her private relationship with the BBOC.)

Resolution

In view of the foregoing violation of G.L. c. 268A by Wilkerson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Wilkerson:

(1) that Wilkerson pay to the Commission the sum of \$1,000² / as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Wilkerson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: September 13, 2001

1/ The BBOC is the only Massachusetts bank designated by the Treasury Department as a Community Development Financial Institution ("CDFI"), which is defined by the Treasury Department as an institution that specializes in community business development and lending in urban, rural or Native American communities that frequently lack adequate access to capital.

2/In determining the amount of the civil penalty, the Commission considered that Wilkerson sought and obtained legal advice from the Commission, reported her actions to the Commission, and, that Wilkerson has a history of active participation in minority community banking issues (which somewhat mitigates the appearance issue).